

Attachment 12

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

SHAUNA WILLIAMS, et al.

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.

Defendants.

Civil Action No. 23 CV 1057

NORTH CAROLINA STATE CONFERENCE
OF THE NAACP, et al.,

Plaintiffs,

v.

PHILIP BERGER, in his official capacity as
the President Pro Tempore of the North
Carolina Senate, et al.,

Defendants.

Civil Action No. 23 CV 1104

Expert Report of Andrew Taylor, Ph.D.

directly. I deploy a survey of the social science literature and examine social science data from a variety of sources, including the U.S. Census and other government reports.

The report proceeds as follows. I examine the Bagley-Clark analysis of the four Factors (3, 5, 7, and 8) I have been asked to address. I then, in two additional sections, look at the Bagley-Clark argument on the minority-group-preferred candidate and their argument regarding Factor 6. I conclude with a summary of my findings.

III. Analysis of Matters Related to Senate Factor 3 Which Deals with “Voting Practices and Procedures”

We should note first that North Carolina has basic election practices that are typical of the country. It does not, therefore, disproportionately hamper its general population’s capacity to participate in “voting practices.” According to the widely-cited “Cost of Voting Index” (COVI) constructed by political scientists Michael J. Pomante II, Scot Schraufnagel, and Quan Li, North Carolina ranked as the 24th easiest state in which to vote in 2022, tied with Rhode Island and ahead of places like Minnesota, Michigan, New Hampshire, and Pennsylvania.⁸ COVI is a composite score of a state’s performance in nine elements considered essential to accessible voting.⁹ When it comes to statewide racial disparities in voting, North Carolina performs better

⁸ Michael J. Pomante II, Scot Schraufnagel, and Quan Li, *The Cost of Voting in the American States*, Lawrence: University Press of Kansas, 2023. The website with regularly updated data is at: <https://costofvotingindex.com/>

⁹ These elements are: (1) registration deadlines (number of days prior to the election a voter must be registered), (2) registration restrictions (a combination of same-day registration, online registration practices, and felon registration rules), (3) preregistration laws (age requirement for preregistration), (4) voting inconveniences (early voting and vote-by-mail rules), (5) voter ID

than the country as a whole. According to a Kaiser Family Foundation analysis of Census data on voter registration and turnout, in 2022 the registration rate for the white North Carolina voting-age population or VAP was 89.4 percent of the national figure (70.9 percent in the United States and 63.4 percent in North Carolina). The equivalent registration rate for Black North Carolinians was 91 percent of the national figure (64.1 percent in the United States, 58.3 percent in North Carolina).¹⁰

Dr. Clark, in his Table 9 on p. 17, presents data from the NCSBE on the turnout of North Carolinians in the Black, Latino, and white racial or ethnic groups in the general elections of 2010-22. The denominator is the number of registered voters in the group. He shows the proportion of whites who vote is higher with the exception of the 2012 election. If Dr. Clark had gone back one more presidential election, moreover, he would have seen that Black turnout exceeded white turnout again, at least in terms of the proportion of registered voters (71.9 percent to 69.4 percent in 2008).¹¹ The elections of 2008 and 2012 are those with President (Senator in 2008) Barack Obama at the top of the Democratic ticket. This suggests the race of a major party presidential nominee is an important determinant of the relative turnout rates of racial groups.

My Table 1 is inspired by Dr. Clark's analysis. Here, however, I look at Black and Latino turnout as a proportion of white turnout and Black and Latino turnout in North Carolina

laws, (6) poll hours, (7) registration drive restrictions, (8) automatic voter registration, and (9) early voting (number of days).

¹⁰ <https://www.kff.org/other/state-indicator/voting-and-voter-registration-as-a-share-of-the-voter-population-by-raceethnicity>

¹¹ The figures are reported by Democracy NC. See: <https://democracync.org/wp-content/uploads/2017/07/NCVoterTurnout2012PR.pdf>

as a proportion of white turnout compared to those rates nationally.¹² As Dr. Clark notes, using registered voters as the category to examine “only provides a conservative measure of differences between racial groups, as even being a registered voter inherently incorporates a certain level of civic engagement.”¹³ I therefore use the voting-age population (VAP) as my denominator—and I go back to 2014. The data are reported by KFF from the Bureau of the Census and, as is the case throughout this report, are for white, Black, and Latino only.¹⁴

Year	Black/White North Carolina	(Black/White North Carolina) / (Black/White United States)	Latino/White North Carolina	(Latino/White North Carolina) / (Latino/White United States)
2014	1.034	1.130	.559	.899
2016	1.012	1.072	.777	1.026
2018	.963	1.037	.717	.976
2020	.975	1.063	.751	.955
2022	.836	1.015	.631	.911

Table 1: Black and Latino Voter-Eligible-Population Turnout Rate as a Proportion of White, North Carolina and North Carolina Relative to the United States, 2014-22.

Figures from <https://www.kff.org/other/state-indicator/voting-and-voter-registration-as-a-share-of-the-voter-population-by-raceethnicity/>

Here, high numbers reflect favorably on North Carolina and show the state’s minority population voting close to the rate of North Carolina whites and that rate compared the country as a whole. Although there is a drop off, the Black rate exceeds that of whites in two years and is very close to it in 2018 and 2020. More strikingly, the Black rate as a proportion of the white

¹² National figures from the Bureau of the Census and can be found at: <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/voting-historical-time-series.html>

¹³ Clark report, p. 18.

¹⁴ See: <https://www.kff.org/other/state-indicator/voting-and-voter-registration-as-a-share-of-the-voter-population-by-raceethnicity/>

rate is always greater in North Carolina than it is nationally—by more than six percent in 2016 and 2020, the two presidential election years, and as much as thirteen percent in 2014. The figures are not as healthy for Latinos, but in no year—if we round up 2014—is the North Carolina rate less than ninety percent of the national rate and in 2016 actually exceeds it. All told, I think this reveals racial and ethnic differences in voter turnout in North Carolina to be around the national benchmark.

The sixteen counties I analyze in a little more detail do not seem to be particularly disadvantaged on this front, either. U.S. Census figures for the 2018 U.S. midterm election report the First District of North Carolina (which contained most of the twelve counties of the Black Belt with the exception of Chowan and Nash) had a VAP turnout of 48.2 percent, placing it number 236 of the 431 congressional districts for which there are figures. The Sixth District of North Carolina (which contained Randolph and some of Guilford County) was number 198, the Thirteenth District of North Carolina (which contained Davidson and the remainder of Guilford) was number 215, and the Fifth District (which contained Forsyth) was 223.¹⁵ The North Carolina State Board of Elections placed 134 or 5.05 percent of its 2,655 polling places for the 2022 general election in the Black-Belt counties, even though altogether the twelve constitute only 3.61 percent (294,000) of the state's VAP according to the 2020 Census.¹⁶ In fact, despite being considerably more urban than the Black Belt, the four Triad counties also had a larger share of polling places in 2022 than they did VAP (11.8 percent of the VAP, that is 965,645 of

¹⁵ U.S. Census Bureau, 2018 American Community Survey Table S2901 and the Office of the Clerk U.S. House of Representatives “Statistics of the Congressional Election November 6, 2018” clerk.house.gov.

¹⁶ For polling place data, see: <https://www.ncsbe.gov/results-data/polling-place-data>. North Carolina VAP data by county can be found at the University of North Carolina's Carolina Population Center's website: <https://carolinademography.cpc.unc.edu/2021/08/12/first-look-at-2020-census-for-north-carolina/>

the state's 8,155,099 residents eighteen years old or more according to the 2020 Census, but 12.7 percent, or 338, of the polling places). These polling places were in the usual community spaces residents gather—fire departments, schools, churches, town halls etc.—in accessible urban areas (“small town” is a more accurate description in these rural counties) or on main highways. Although not one of the twelve Black-Belt counties, Pasquotank, the largest county in Senate District One, had one of its polling places at a local HBCU, Elizabeth City State University's Kermit E. White Center. This was also the county's only early voting polling place.

With regards the placement of the early voting sites in the 2024 general election, the Black-Belt counties have 6.24 percent (26 out of 417) and the four Triad counties 13.7 percent (57 out of 417). These numbers are again in excess of the areas' share of the VAP. One of Forsyth County's early voting sites is at Winston-Salem State University and one of Guilford County's early voting sites is at North Carolina A&T University, another is at Barber Park near Bennett College. All are HBCUs.¹⁷

The early voting sites in Guilford and Forsyth tend to be close to Black population centers because these counties are urban and Black residents within the counties disproportionately live in the cities of Greensboro and Winston-Salem. But even in the Black-Belt counties, boards of election have tended to place early voting sites in convenient locations for Black residents. Of the twenty-two in the twelve Black-Belt counties during the 2022 general election, sixteen were in Census tracts where the Black population exceeded the Black population in the county as a whole. Those that were above the county average were Bertie-Powellsville (Tract 9602, 66.1% to 61.7%), Chowan (Tract 9301.01 51.7% to 33.5%),

¹⁷ For 2024 general election early voting sites, see: https://s3.amazonaws.com/dl.ncsbe.gov/One-Stop_Early_Voting/2024/Early-Voting-Site-List-2024-General.pdf

Edgecombe-Tarboro (Tract 210, 64.3% to 56.2%), Edgecombe-Rocky Mount (Tract 202, 78.9% to 56.2%), Gates (Tract 9702, 39.7% to 31.5%), Halifax-Halifax (Tract 9310, 60.8% to 51.6%), Halifax-Enfield Fire (Tract 9309.02, 77.8% to 51.6%), Halifax-Scotland Neck (Tract 9311.02, 84.4% to 51.6%), Martin (Tract 9702, 48.1% to 41.7%), Nash-Grace Street (Tract 104, 68.6% to 40.5%), Nash-Nashville (Tract 11.03, 44.2% to 40.5%), Northampton-Gaston (Tract 9204.01, 57.8% to 54%), Northampton-Rich Square (Tract 9202.01, 55.5% to 54%), Vance-Beckford Drive (Tract 9605, 70.7% to 48.9%), Vance-Aycock Rec (Tract 9609.03, 50.1% to 48.9%), and Warren (Tract 9503, 63.5% to 47.7%).¹⁸

IV. Analysis of Matters Related to Senate Factor 5 Where “Group Members Bear the Effects of Discrimination”

Senate Factor 5 requires judges to consider “the extent to which the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process.” By way of response, Dr. Bagley’s report looks at education, employment, and health. Dr. Clark adds an analysis of income. Rather than do a broad survey, my approach is largely to replicate Dr. Clark’s analysis. I also add reputable sources to bolster my analyses since there are sometimes data-collection and

¹⁸ The early polling place data <https://www.ncsbe.gov/results-data/polling-place-data>. The county and census tract Black population data are from the American Community Survey, 2022 5 Year Estimates, Table DP05, Black or African American One Race. See: <https://www.census.gov/programs-surveys/acs>. These data can be found in map form at: <https://www.arcgis.com/home/item.html?id=968111f896764fedaca6fef8d1a4e90a>. The six other sites are: Bertie-Windsor (Tract 9604.1, 58.1% to 61.7%), Edgecombe-Pinetops (Tract 215, 45.5% to 56.2%), Hertford (Tract 9504.01, 53.2% to 58.3%), Nash-Bailey (Tract 114, 18.8% to 40.5%), Northampton-Jackson (Tract 9202.02, 53.6% to 54%), and Washington (Tract 9501, 45% to 48.3%).

analysis issues with ACS one-year estimates, particularly around the time of the Covid-19 pandemic.¹⁹ Rather than merely contrast the data on Black North Carolinians with that on white North Carolinians, however, I compare North Carolina to the rest of the United States and to itself in the past.

Let me start my analysis with education. Education is believed to be important for political participation. As Dr. Bagley and Dr. Clark note, research shows individuals with more education are more likely to vote in elections. They also draw attention to the checkered past of North Carolina's public schools. As a southern state, the state's schools were formally segregated along racial lines through to the 1960s and academic performance was often poor—for white as well as Black students.²⁰ As recently as 1990, according to data from the National Information Center for Higher Education Policymaking and Analysis, only 68 percent of those who entered ninth grade graduated high school within four years, a figure below the national rate of 71.2 percent.²¹

Things are different today, however. I turn first to school segregation by race, a subject discussed in some detail by Dr. Bagley.²² Drawing on data from the Longitudinal School Demographic Dataset (LSDD) that, in turn, is taken from the National Center for Education Statistics' (NCES) "Common Core" of data, academics at the University of Southern California and Stanford University have recently constructed "The Segregation Index" to measure the

¹⁹ See the Bureau of the Census's explanation of the impact of Covid-19 at: <https://www.census.gov/newsroom/blogs/random-samplings/2021/10/pandemic-impact-on-2020-acs-1-year-data.html>. These estimates come with confidence intervals that can be quite broad for relatively small groups—particularly at the state and county levels.

²⁰ For a nice summary, <https://files.eric.ed.gov/fulltext/ED369713.pdf>

²¹ <http://www.higheredinfo.org/>

²² Bagley report, pp. 33-36.

extent to which segregation occurs in counties and states within the United States. Data are annual from 1991 to 2022 and at the individual school level.²³ For each jurisdiction, The Segregation Index provides a number of different scores including the “normalized-exposure index” that determines the difference within the jurisdiction of the proportion of children in group A who attend school with the average child in group A and the proportion of children in group A who attend school with the average child in group B.

Because the racial and ethnic composition of states varies so dramatically, it makes sense to examine school composition using the two groups of white and minority (that is, all groups other than “white alone,” including Hispanic) when comparing North Carolina to the United States. Indeed, as if to enable the comparison the non-Hispanic white proportion of North Carolina’s school-aged population has largely mirrored that of the nation. It was 49.3 percent in 2020, the nation’s 47.4 percent.²⁴

For there to be perfectly desegregated schools, both the average non-white and average white student should go to a school that is about fifty percent white and fifty percent non-white since almost exactly half of the state’s and the nation’s school-aged population is non-Hispanic white.²⁵ In other words, the difference between the proportion of white children in the average white child’s school and the proportion of white children in the average non-white child’s school should be close to zero on a scale of 0-1. It is true using that these data reveal North Carolina

²³ The data can be found at a website run by the Educational Opportunity Project at Stanford University. See: <https://edopportunity.org/segregation/explorer>. Dr. Sean Reardon is the director. The data can also be downloaded into various spreadsheet and statistical programs upon request.

²⁴ <https://www.census.gov/library/visualizations/interactive/exploring-age-groups-in-the-2020-census.html>

²⁵ Such “perfect” desegregation does not exist in any diverse jurisdiction, largely because of residential patterns.

schools to have become slightly more segregated over time, a development that could be the result of policy or shifting population patterns. However, North Carolina schools are a little less segregated than those of the rest of the nation.²⁶ In 2022, the Educational Opportunity Project data report the proportion of white children in the average white child's school was thirty percentage points greater than for the average non-white child (the normalized-exposure index score was .30). The average for the other 49 states was 32 percentage points or .32. North Carolina schools are significantly less segregated in this regard than those of New York (white-non-white score of .52), Illinois (.47), Pennsylvania (.46), Tennessee (.46), Connecticut (.37), and Georgia (.35) to name just some.

I use the white-Black—rather than white-non-white—segregation index to compare the Black Belt and Triad counties with the state as a whole. This makes sense given North Carolina's minority population is largely Black.²⁷ Here the state index score is .39. The average for the Black-Belt counties is .15 and for the Triad counties it is .32. By this measure, the twelve Black-Belt counties are less segregated than the state as a whole.²⁸

We can also look at educational credentials. In Table 1 of his report, Dr. Clark reports the percentage of North Carolinians with a high-school education or greater by race and ethnicity annually from 2010 to 2022.²⁹ He uses the Bureau of the Census's American Community Survey (ACS) one-year estimates to do so. Figures are from the population that is 25 years and

²⁶ See: <https://edopportunity.org/segregation/explorer/>.

²⁷ Incidentally, North Carolina fairs no worse in national comparisons if we use Blacks instead of non-whites as the comparison group to whites.

²⁸ See: <https://edopportunity.org/segregation/explorer/>. The data are available at the county level as well.

²⁹ Clark report, p. 5.

older. I do something very similar here by also using data from NCES.³⁰ However, instead of reporting raw percentages, I compare the proportion of Black and Latino high-school graduates with white graduates in North Carolina across the time series and with the United States as a whole. The objective is to put Dr. Clark's analysis into a comparative and historical context.

My Table 2 is below. In the second and fourth columns I simply show the Black and Latino percentage of North Carolina residents with a high-school education as a proportion of the percentage of white residents. The third and fifth columns report those proportions as a proportion of the national equivalents. Ascending scores are demonstrative of improving minority education outcomes relative to whites in North Carolina and North Carolina relative to the United States. High scores in columns two and four show high levels of minority education relative to whites in North Carolina, in columns three and five in North Carolina relative to the United States.

³⁰ See: <https://nces.ed.gov/programs/coe/indicator/coi/high-school-graduation-rates>

Year	Black/White North Carolina	(Black/White North Carolina) / (Black/White United States)	Latino/White North Carolina	(Latino/White North Carolina) / (Latino/White United States)
2010	.922	.979	.641	.896
2011	.934	1.001	.609	.870
2012	.946	1.012	.612	.866
2013	.938	.992	.623	.864
2014	.950	1.013	.626	.859
2015	.955	1.021	.638	.856
2016	.948	1.010	.666	.899
2017	.953	1.014	.670	.891
2018	.959	1.015	.694	.913
2019	.953	.998	.692	.894
2021	.958	1.015	.699	.923
2022	.957	1.016	.734	.955

Table 2: Blacks and Latinos Over 25 with a High-School Education or Greater as a Proportion of Whites, North Carolina and North Carolina Relative to the United States, 2010-22.

Figures calculated by author from Clark report and NCES (Digest of Education Statistics, Table 104.85).

The proportion of Black North Carolinians over 25 years and older who have a high school diploma is very close to the level of whites. It is growing and is now comfortably above 95 percent of the white proportion. North Carolina's figure is also essentially at the national level and, indeed, in most years exceeds it (the value is greater than one). The story for Latinos is a bit different. The high-school graduate rate is less than three-fourths that of North Carolina whites and the state's rate is under the national figure. Still, both numbers have improved dramatically in the past several years. One plausible, if speculative on my part, explanation is that young North Carolina Latinos are increasingly growing up in the kinds of English-speaking, less-transient, and multi-generation immigrant households Latinos in other states—especially

those in the southwest with more established populations—have experienced for decades. Such families are more tightly integrated into the physical community where they live.³¹

We can also look at the graduation rate in the Black-Belt and Piedmont-Triad school districts. Table 3 shows the annual graduation rate from 2010-22 for Black and Latino students in the Northeast and Piedmont-Triad school regions as a proportion of that of white students there and Black and, for the Triad, Latino students in all other jurisdictions statewide.³² The data are from the North Carolina Department of Public Instruction (NCDPI) website.³³ It is clear that the minority population graduation rates in the Piedmont-Triad are generally higher than the rest of the state. Moreover, the Black graduation rate in the area tends to be higher than the white graduation rate. Black students in the Northeast have essentially caught up with their white classmates, but generally graduate at rates a little lower than Blacks statewide. Latinos in the Triad routinely graduate at lower rates than whites, but as of 2022, after starting over 14 percentage points behind in 2010 (63.03 percent to 77.62 percent), they are now at parity with their white peers.

³¹ Although on a different subject, a recent study shows that Latino mortality rates vary greatly and that in communities with large established Latino populations that attract Latino migrants from within the United States these rates are much more like those of whites. See: Noli Brazil, “Spatial Variation in the Hispanic Paradox: Mortality Rates in new and Established US Destinations,” *Population, Space, and Place* (2015): DOI: 10.1002/psp.1968. Some of the difference in graduation rates may be due to the gender composition of the Latino population in an area. As the Pew Research Center has found, the gap between the educational attainment of Latino men and women has increased significantly over the past twenty years. See: <https://www.pewresearch.org/race-and-ethnicity/2024/05/15/how-latinas-educational-and-economic-situation-has-changed-in-the-last-two-decades/>

³² The Northeast region includes all the Black-Belt counties except Edgecombe, Nash, Vance, and Warren.

³³ See: https://accrpt.tops.ncsu.edu/docs/cgrdisag_datasets/

Year	Black Piedmont/ White Piedmont	Black NE/ White NE	Latino Piedmont/ White Piedmont	Black Piedmont/ Black Rest of North Carolina	Black NE/ Black Rest of North Carolina	Latino Piedmont/ Latino Rest of North Carolina
2010	.978	.953	.812	1.030	.970	.961
2011	.999	.984	.874	1.051	1.013	.983
2012	1.024	.968	.914	1.056	.997	1.000
2013	1.032	.964	.927	1.044	.982	1.019
2014	1.012	.992	.951	1.038	.999	1.016
2015	1.017	.995	.964	1.031	.994	1.011
2016	1.006	1.004	.961	1.028	1.001	1.020
2017	1.000	1.005	.971	1.020	.988	1.011
2018	.981	1.002	.952	1.010	.985	1.002
2019	.991	1.010	.968	1.019	.996	1.009
2020	1.008	1.032	.976	1.021	1.010	1.010
2021	1.013	.984	.997	1.025	.993	1.010
2022	1.015	.984	1.014	1.012	.993	1.030

Table 3: Black and Latino Graduation Rate in the Piedmont-Triad Region School Districts as a Proportion of Whites and Proportion of Blacks and Latinos in North Carolina, 2010-22.

Figures calculated by author from NCDPI. NE=Northeast region.

The story is similar for college graduates, the subject of Dr. Clark's Table 2. In Table 4 below, I replicate the analysis in Table 1 for K-12 education by presenting data on the proportion of college graduates over the age of 25. The proportion of Black North Carolinians over 25 years and older who have a college degree is lower than the level of whites, although it has been growing steadily across the past decade and is now close to two-thirds the white figure. In a national context, however, the figure seems more acceptable. The Black college graduate rate as a proportion of the white college graduate rate in North Carolina is never less than 93 percent of the national figure and in three years exceeds it. Again, the story for Latinos is a bit different. But notice the Latino college-graduate rate as a proportion of the white figure in the state is

generally only about 5-7 percentage points under the national figure. This suggests an increase in the size of the Latino college-educated population nationally since the North Carolina rate as a proportion of the white figure has grown from about forty percent to about fifty percent over the course of the past decade or so.

Year	Black/White North Carolina	(Black/White North Carolina) / (Black/White United States)	Latino/White North Carolina	(Latino/White North Carolina) / (Latino/White United States)
2010	.584	.983	.395	.981
2011	.570	.932	.372	.834
2012	.570	.950	.374	.829
2013	.606	.973	.410	.943
2014	.624	1.012	.401	.855
2015	.606	1.019	.419	.934
2016	.611	.998	.446	1.011
2017	.624	1.012	.444	.982
2018	.625	.982	.452	.968
2019	.638	.987	.484	.985
2021	.638	.988	.473	.925
2022	.643	.984	.500	.969

Table 4: Black and Latino College Graduates Over 25 as a Proportion of Whites, North Carolina and North Carolina Relative to the United States, 2010-22.

Figures calculated by author from Clark report and NCES (Digest of Education Statistics, Table 104.85).

According to the University of North Carolina’s official statistics, the proportion of students enrolled in UNC-system colleges who were Black increased from 20.5 percent in the fall of 2014 to 21.2 percent in the fall of 2023—just about the same proportion of the state’s total population that is Black.³⁴ Data from the Lumina Foundation’s “Stronger Nation” project report

³⁴ <https://www.northcarolina.edu/impact/stats-data-reports/interactive-data-dashboards/>

the proportion of Black North Carolinians who have college degrees (bachelors or higher) is higher than the national average, even if it is not quite at the level of the white rate in the state. In 2022, the state figure was 26.9 percent, the national figure 26.3 percent. This is particularly impressive, because as recently as 2009 North Carolina lagged the rest of the country—the state figure was then 18 percent, the national figure 18.4 percent.³⁵ The enactment of NC Promise has reduced student tuition to \$500 per semester in four UNC schools permitting greater access for low socio-economic students. Two of the four are historically black colleges and universities (HBCUs), Elizabeth City State University and Fayetteville State University.³⁶

Dr. Clark, especially, looks at issues incorporated in Senate Factor 5 that have to do with income and health. In Table 3, he looks at the unemployment rate in North Carolina by race and ethnicity. In my Table 5 below, I do the same, but again I put these figures into a comparative and broader national context. I use Dr. Clark's figures from ACS in addition to Bureau of Labor Statistics (BLS) numbers for the nation as a whole.³⁷ I compare the Black and Latino unemployment rates with the white rate in North Carolina and take the proportion of the white rate that is the Black rate and Latino rate in the state and compare them with their national equivalents. Remember here that a high unemployment rate is bad and so we would like to see figures close to or below one.

³⁵ https://www.luminafoundation.org/stronger-nation/report/#!/progress/racial_equity

³⁶ The other two are Western Carolina University and the University of North Carolina at Pembroke. See: <https://www.northcarolina.edu/impact/affordability-efficiency/nc-promise>

³⁷ See: <https://www.bls.gov/opub/reports/archive.htm>

Year	Black/White North Carolina	(Black/White North Carolina) / (Black/White United States)	Latino/White North Carolina	(Latino/White North Carolina) / (Latino/White United States)
2010	1.79	.973	1.36	.944
2011	1.93	.965	1.09	.747
2012	1.94	1.01	1.26	.881
2013	2.00	.990	1.18	.843
2014	2.09	.981	1.24	.867
2015	2.13	1.02	1.35	1.00
2016	1.96	1.01	1.26	.940
2017	2.00	1.02	1.33	.993
2018	1.95	1.05	1.40	1.08
2019	1.92	1.04	1.24	.873
2021	1.91	1.04	1.26	.869
2022	2.07	1.08	1.38	1.03

Table 5: Black and Latino Unemployment Rate as a Proportion of White Unemployment Rate, North Carolina and North Carolina Relative to the United States, 2010-22.

Figures calculated by author from Clark report and BLS.

For the most part we do not. The Black and Latino unemployment rates in North Carolina are always greater than the white rate. When placed into a national context, however, North Carolina does moderately well. As a proportion of the white rate, the Black unemployment rate in the state has been creeping a little above the national rate recently but historically it has been close to it. The state's Latino rate when measured this way is generally, but not always, below the national number.

Dr. Clark also reports median household income. I do too in my Table 6. The Black median household income is lower than the white median income in the state, but is generally higher than the national Black-white figure. In fact, in only two years is the Black median household income as a proportion of the white median household income lower in North

Carolina than it is in the United States as a whole. The Latino income in the state is growing quickly relative to the white level and today is more than three-fourths the white number.

Although the North Carolina ratio is lower than the national equivalent, the state is catching up quickly. The cause is likely similar to that I gave above for high school graduation rates. North Carolina's Latino community is establishing itself and is integrating into public life like those of other states.

Year	Black/White North Carolina	(Black/White North Carolina) / (Black/White United States)	Latino/White North Carolina	(Latino/White North Carolina) / (Latino/White United States)
2010	.638	.998	.665	.869
2011	.626	1.006	.667	.900
2012	.627	1.016	.672	.911
2013	.628	1.008	.677	.911
2014	.639	1.032	.628	.843
2015	.617	1.008	.656	.875
2016	.647	1.030	.708	.927
2017	.650	1.028	.688	.881
2018	.636	1.010	.696	.892
2019	.644	1.025	.735	.922
2021	.618	.990	.775	.959
2022	.666	1.034	.763	.926

Table 6: Black and Latino Median Household Income as a Proportion of White Median Household Income, North Carolina and North Carolina Relative to the United States, 2010-22.

Figures calculated by author from Clark report and ACS one-year surveys, Table S1903.

I replicate Dr. Clark's work on the poverty rate as well. This is presented in my Table 7. Unsurprisingly, the results are similar to those of other socioeconomic indicators. Note that since this is the poverty rate, low scores are positive. North Carolina again does well nationally

when it comes to the performance of Blacks relative to white residents. The Black poverty rate in the state is only coming down a little as a proportion of the white figure, but that score is still consistently and materially smaller than the national equivalent. Latino North Carolinians are a puzzle. Relative to whites the data for educational attainment and income in North Carolina has improved dramatically relative to the national numbers. This has not really happened to the Latino poverty rate, which has improved only marginally relative to North Carolina whites but not at all compared to the national Latino poverty rate as a proportion of the white poverty rate.

Year	Black/White North Carolina	(Black/White North Carolina) / (Black/White United States)	Latino/White North Carolina	(Latino/White North Carolina) / (Latino/White United States)
2010	2.10	.820	2.57	1.10
2011	2.06	.805	2.57	1.08
2012	2.07	.815	2.47	1.07
2013	2.06	.827	2.39	1.07
2014	1.99	.799	2.53	1.13
2015	1.99	.816	2.43	1.12
2016	1.96	.824	2.28	1.09
2017	1.90	.795	2.37	1.18
2018	1.90	.798	2.23	1.11
2019	2.05	.869	2.10	1.10
2021	2.12	.930	2.36	1.28
2022	1.95	.867	2.16	1.23

Table 7: Black and Latino Poverty Rates as a Proportion of White Poverty Rate, North Carolina and North Carolina Relative to the United States, 2010-22.

Figures calculated by author from Clark report and ACS one-year surveys, Table S1701.

As for the counties in the Black Belt and Triad examined earlier, their performance on these socioeconomic metrics as reported by the Bureau of the Census is what we might call

middling. In terms of Black Household median income for 2022, nine of the sixteen rank in the top fifty (Nash 24, Guilford 26, Gates 34, Davidson 44, Forsyth 45, Vance 46, Hertford 47, Edgecombe 49, Northampton 50), seven in the bottom fifty (Martin 65, Randolph 69, Halifax 71, Bertie 74, Warren 75, Chowan 85, Washington 90).³⁸ On the Black poverty rate in 2022 (measured lowest to highest), if we exclude Martin (and all other counties) for which there is insufficient data, seven are in the top half (Davidson 25, Nash 29, Forsyth 30, Guilford 33, Hertford 36, Vance 45, Northampton 47) and eight in the bottom half (Warren 56, Edgecombe 57, Gates 59, Bertie 65, Halifax 71, Randolph 74, Washington 78, Chowan 81).³⁹

Finally in this section, I look at healthcare. I do not extend Dr. Clark's analysis of rates of disabled Black, Latino, and white North Carolinians, because I do not think it helps his argument. Latinos are much less likely to be disabled than whites and Blacks and the figure for Blacks over 65 has improved dramatically both in an absolute sense and relative to whites.⁴⁰ I do look at the rate of uninsured people in each group, however. Here, in my Table 8, I work from Dr. Clark's Table 8. Again, because this is the uninsured rate, low scores reflect positively on North Carolina. Note that, once again, Blacks in the state perform well on these metrics relative both to Blacks nationally and Latinos in North Carolina. As a proportion of the white uninsured rate, the Black uninsured rate in North Carolina is always lower than in the United States and in most years is less than 90 percent of that number. The Latino uninsured rate is going in the

³⁸ The data are from NC OSBM's LINC dataset. See: <https://linc.osbm.nc.gov/pages/home/>

³⁹ The figures are from the National Institute on Minority Health and Health Disparities. See: https://hdpulse.nimhd.nih.gov/data-portal/social/table?socialtopic=080&socialtopic_options=social_6&demo=00007&demo_options=poverty_3&race=00&race_options=race_7&sex=0&sex_options=sexboth_1&age=001&age_options=ageall_1&statefips=37&statefips_options=area_states. They are ACS five-year estimates.

⁴⁰ Clark report, pp. 12-13.

wrong direction, however. It is unclear why this is so, although it may be a function of their relative cultural and linguistic distinctiveness and isolation.⁴¹

Year	Black/White North Carolina	(Black/White North Carolina) / (Black/White United States)	Latino/White North Carolina	(Latino/White North Carolina) / (Latino/White United States)
2010	1.32	.868	2.88	1.04
2011	1.28	.848	3.01	1.23
2012	1.28	.848	2.91	1.19
2013	1.38	.902	2.95	1.21
2014	1.25	.822	3.04	1.20
2015	1.16	.739	3.28	1.22
2016	1.18	.781	3.22	1.20
2017	1.15	.757	3.16	1.22
2018	1.09	.712	3.03	1.20
2019	1.16	.794	3.16	1.23
2021	1.39	.921	3.74	1.42
2022	1.38	.908	4.14	1.52

Table 8: Black and Latino Uninsured Rates as a Proportion of White Uninsured Rate, North Carolina and North Carolina Relative to the United States, 2010-22.

Figures calculated by author from Clark report and ACS one-year surveys, Table S2702.

These are the second and third reports I have responded to in a case where plaintiffs are attempting to demonstrate the presence of Senate Factor 5 or “the extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process.” Their goal is to

⁴¹ Carl Smith, writing in *Governing* magazine in April 2024, summarizes work done on the health insurance rate among Latinos in the United States. Some of the low rate is also attributable to the observation Latinos work disproportionately in agriculture and, in many states including North Carolina (in counties like Chatham, Duplin, Sampson, and Lee), live in rural areas. See: <https://www.governing.com/health/hispanics-make-up-nearly-half-the-nations-uninsured>

show the political process in the state of North Carolina is not equally open to the minority group. I conclude this section with two additional thoughts in this regard. First, and as I believe I have demonstrated, the data I present should make us dig a little deeper before we merely assume the racial and ethnic differences in outcomes presented in the reports of Drs. Bagley and Clark are evidence of consistent and pervasive disadvantages Blacks experience in North Carolina. Their approach is to argue Black North Carolinians are disadvantaged largely by providing evidence that on these metrics they perform worse than do white North Carolinians. The argument is explicitly not one that Blacks face similar disadvantages across the United States. North Carolina is assumed to be distinct and materially worse than in places where the national groups behind this kind of litigation do not bring suit. My approach reveals North Carolina is not particularly different from the country as a whole on these issues. I do this by comparing the performance of Black North Carolinians as a proportion of the performance of white North Carolinians with the national equivalent. When this is done we see Black North Carolinians are sometimes a little worse off than Black Americans in general, sometimes a little better off, and on some occasions there is no material difference. This approach, moreover, shows the principal reason Black North Carolinians sometimes do worse than Black Americans when the two groups are compared directly—something neither the Bagley and Clark reports address—is that white North Carolinians do similarly poorly when compared to whites nationally. According to ACS one-year estimates, for example, the median household income of whites in North Carolina in 2022 was \$74,488, nationally it was \$81,423.⁴² I assume few would say North Carolina disadvantages white people more than other states.

⁴² 2018-2022 ACS five-year survey, Table S1903.

Moreover, there are distinct and interesting differences between North Carolina's Black and Latino populations. Blacks do better than Latinos in areas where the state appears to have some capacity to influence outcomes—and presumably exacerbate or reduce racial and ethnic differences. North Carolina Blacks graduate high school in higher percentages and a higher proportion have college degrees. A greater proportion have health insurance. But on matters such as median household income and the unemployment rate that are the product of a broader mix of factors including personal agency and where state policies have little in the way of direct or determinative impact, North Carolina Latinos do better than North Carolina Blacks.⁴³

Finally, it is notable that North Carolina has seen an increase in Black migration to the state in the last 25 years. According to research from demographer William Frey published in a Brookings Institution report, Census data show that in raw numbers North Carolina had the third highest net Black-American in-state migration from 1995-2020—behind only Georgia and Texas.⁴⁴ It belies logic that Black Americans would move to a state that they believed was systematically discriminating against them.

V. Analysis of Matters Related to Senate Factor 7 which Deals with the Election of Minority Public Officials

Senate Factor 7 calls on judges to consider “the extent to which members of the minority group have been elected to office in the jurisdiction.” North Carolina has not had one of the only

⁴³ The poverty rate is the exception. Notice it is higher for Latinos. This is interesting and suggestive of diverse economic experiences among the Latino population in North Carolina.

⁴⁴ See Frey's September 2022 report, A 'New Great Migration' is Bringing Black Americans Back to the South,” at: <https://www.brookings.edu/articles/a-new-great-migration-is-bringing-black-americans-back-to-the-south>. The data I report come from his Table A.

five Black Americans elected as governor of their state and ten Black Americans to serve in the U.S. Senate. However, nine of the 154 Blacks (5.8 percent) to serve in the U.S. House since 1870 have been from North Carolina—including since 1990, Reps. Alma Adams, Frank Ballance, G.K. Butterfield, Eva Clayton, Don Davis, and Mel Watt.⁴⁵ This is roughly the proportion of the U.S. Black population that has been from North Carolina over the past several decades. Butterfield served as chair of the Congressional Black Caucus from 2015-17. Watt went on to serve as director of the Federal Housing Agency for five years under President Obama and President Trump—we might note, Black North Carolinian Michael S. Regan serves as the current Administrator of the Environmental Protection Agency. As far as I can tell, there have been seven Black North Carolina Supreme Court justices, including the current Justice Anita Earls. North Carolina has a Black Lieutenant Governor, Mark Robinson (who is also the Republican Party's nominee for Governor in 2024), and State Auditor candidate, Jessica Holmes is Black.⁴⁶

As of now, I count 35 members (20.58 percent) of the 170-member North Carolina General Assembly who are Black, including House and Senate minority leaders Robert Reives and Dan Blue—the latter also served as House speaker for two terms in the early 1990s. According to the National Conference of State Legislatures, today 10.55 percent of the country's state legislators are Black.⁴⁷ With the U.S. population being roughly 12-13 percent Black, the

⁴⁵ The information on congressional representation can be found at:
<https://crsreports.congress.gov/product/pdf/RL/RL30378>

⁴⁶ Holmes was appointed by Gov. Roy Cooper to fill a vacancy, but she has secured the Democratic nomination in the 2024 election. She also served two terms as a Wake County commissioner.

⁴⁷ <https://www.ncsl.org/about-state-legislatures/legislatures-at-a-glance>

ratio of state legislators to general public that is Black nationally is approximately 88 percent.⁴⁸ As Dr. Clark's Table 12 (p. 38) shows, the North Carolina figure has been above 88 percent since 2018.

Several large North Carolina cities have Black mayors, including Charlotte (Vi Lyles), Durham (Leo Williams), and Fayetteville (Mitch Colvin). According to the North Carolina Black Alliance, there are currently 581 Black elected officials in North Carolina.⁴⁹

VI. Analysis of Matters Related to Senate Factor 8 which Deals with the Responsiveness of Policymakers

In establishing the various "factors" the U.S. Senate published in its report accompanying the 1982 amendments to VRA, it noted courts could consider matters in addition to the seven enumerated factors. One of these was "whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group." I shall discuss the responsiveness of policymakers to Black North Carolinians.

Professors Devin Caughey and Christopher Warshaw have constructed annualized measures of state policy and state public opinion on a host of issues.⁵⁰ Their data provide a nice

⁴⁸ 2020 Census data, Table P1. It depends on if you consider Black Americans of more than one race or not.

⁴⁹ <https://ncblackalliance.org/about-us/>

⁵⁰ See, Devin Caughey and Christopher Warshaw, *Dynamic Democracy: Public Opinion, Elections, and Policymaking in the American States*, Chicago: University of Chicago Press 2022. The policies they use and the sources from which they are derived are described on pp. 13-17. They construct measures of the attitudes of a state's public on these issues from a wide array of academic and commercial opinion polls to identify a distinct set of items on economic and cultural issues. This approach is described on pp. 17-23, where they also explain how they matched issues in state policy with an equivalent from the survey data. Following that, they build ideology scores for each state's policies and public for each year—a method explained on

election exit poll reported by the *New York Times*, for example, 57 percent of the state’s Latino voters selected Joe Biden, 42 percent Donald Trump.⁶⁴ The 2022 U.S. Senate exit poll in North Carolina revealed Republican victor Ted Budd lost only 52-46 among Latinos to his opponent Cheri Beasley.⁶⁵ To be clear, I am not performing any detailed statistical analyses of racially-polarized voting. But generally speaking, it does not appear that Latino and Black voters in North Carolina necessarily vote for the same candidates.

VIII. Analysis of Matters Related to Factor 6: Trump and Race in North Carolina

Senate Factor 6 explores “whether political campaigns have been characterized by overt or subtle racial appeals.” It is not always clear what Factor 6 means by how many “campaigns” is sufficient and where and when they need to occur, let alone what constitutes a “racial appeal”—particularly if it can be “subtle.”⁶⁶ But it bears wondering whether the members of Congress who passed the 1982 Amendments would consider any of the “appeals” identified by Drs. Bagley and Clark as “racial.” This is of course difficult to know. I do, however, think it is important to address Dr. Clark’s argument former President Donald Trump’s words and deeds demonstrate that recent North Carolina elections have been characterized by racial appeals, both “overt” and “subtle.”⁶⁷

⁶⁴ <https://www.nytimes.com/interactive/2020/11/03/us/elections/exit-polls-north-carolina.html>

⁶⁵ <https://www.cbsnews.com/midterms/2022/north-carolina/senate/exit-poll>.

⁶⁶ https://www.law.berkeley.edu/files/kats_discrimination_in_voting.pdf. As Ellen Katz notes in her essay for the Voting Rights Initiative at the University of Michigan, there is disagreement about what constitutes a racial appeal and what campaigns are relevant to the case being decided.

⁶⁷ Clark report, pp. 25-30.

Dr. Clark writes Trump “won support from voters due to animus towards Blacks and Latinos” as a result of his “racial appeal” to them.⁶⁸ Dr. Clark stretches the idea of racial appeals greatly to the limit. Admittedly citing confirmatory literature, he argues discussions of the issues of crime and immigration during the 2022 U.S. Senate campaign in North Carolina show the Republican candidate, then-Rep. Ted Budd, to be appealing to white voters along racial lines.⁶⁹ Dr. Clark selects quotes from Budd discussing “illegal immigration” and “Biden’s Open Border.” “Open borders,” Dr. Clark quotes Budd as saying, result in “crime and drugs” and “out-of-control crime.” Dr. Clark does not “fact check” these statements but states that because Budd is referring to the U.S. border with Mexico, they are first and foremost “implicit racial appeals.” I wonder if it is possible, according to this logic, to take what is conventionally considered a “conservative” position on illegal immigration without making a “racial appeal.”⁷⁰ At the time of Budd’s campaign the U.S. Customs and Border Protection agency was experiencing about 230,000 “encounters” monthly at the border with Mexico, an increase of about fifty percent from the previous year. In the early part of 2024 around one-fourth of Americans cited “immigration” in response to Gallup’s “most important problem” question.⁷¹ Surely immigration is regularly addressed without racial or ethnic undertones.

More to my central point, approximately 2.75 million North Carolinians voted for Trump in 2020. There were a myriad of reasons for them to vote for him entirely unrelated to race, and

⁶⁸ Clark report, p. 29.

⁶⁹ Clark report, pp. 24-25.

⁷⁰ See U.S. Customs and Border Protection official data at:
<https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>

⁷¹ Gallup routinely asks survey respondents: “What do you think is the most important problem facing this country today?” See: <https://news.gallup.com/poll/611135/immigration-surges-top-important-problem-list.aspx#:~:text=Gallup%20started%20compiling%20mentions%20of,the%20highest%20in%20Gallup's%20trend.>

even Trump himself. There were as many reasons unrelated to race to vote against Trump. The academic literature points to, among other factors, habitual party voting, ideological proximity, national economic conditions, personal financial circumstances, and individuals' assessment of the incumbent party's performance in office.⁷² Some of the literature suggests many Americans who voted for Trump in 2016 were motivated by sexism.⁷³ His opponent, after all, was a white woman. Two large, representative, and reputable national surveys, the Cooperative Election Study (CES) and American National Election Studies (ANES), estimate that the immediately previous presidential general election candidate about one-in-eight 2016 Trump voters had voted for was a Black man of the other party, Barack Obama in 2012.⁷⁴ In 2008, exit polls suggest four percent of Black voters nationally selected Republican candidate John McCain, that figure was six percent for Mitt Romney in 2012. Trump's figures were eight percent in 2016 and twelve percent in 2020—one percentage point more than George W. Bush received in a winning effort in 2004.⁷⁵ Black Americans supported Trump more than his immediate predecessors as Republican nominee for president.

It is also strange to suggest Trump, a three-time candidate for national elected office from New York, brought racial appeals to North Carolina elections particularly. In 2016 Trump won a larger proportion of the vote in 23 states than he did in North Carolina. In 2020 that figure was

⁷² As you might imagine, there is a huge literature on vote choice. It is too large to list here even if we restrict ourselves to studies related specifically to presidential elections. I list what I consider to be among the most prominent subjects of the scholarly work on the subject.

⁷³ John Sides, Michael Tesler, and Lynn Vavreck, *Identity Crisis: The 2016 Presidential Campaign and the battle for the Meaning of America*, Princeton: Princeton University Press, pp. 186-9. Sides, Tesler, and Vavreck also discuss sexism in the Democratic primaries that year. See pp. 99-100 and 121-2.

⁷⁴ For more on ANES, see: <https://electionstudies.org>. For more on CES, see: <https://cces.gov.harvard.edu>. Obama is actually of mixed race, his mother was white.

⁷⁵ The Roper Center for Public Opinion Research located at Cornell University makes these data available. See: <https://ropercenter.cornell.edu/elections-and-presidents/exit-polls>.

24 states.⁷⁶ That second year, six million Californians and 3.25 million New Yorkers voted for Trump. A total of about 71.5 million Americans who did not live in North Carolina in 2020 did so.⁷⁷

To argue Trump’s alleged racial appeals are particularly important in a North Carolina—as opposed to say, a Massachusetts, context—Dr. Clark posits “guilt by association.” In citing the influential *American Political Science Review* article by Lillian Mason, Julie Wronski, and John Kane, Dr. Clark is careful to say Trump is different from other Republicans.⁷⁸ For example, animosity towards Blacks was more predictive of the warmth of feelings toward Trump than it was the Republican Party or other leaders like Paul Ryan and Mitch McConnell in 2016. But because Trump is an individual and national political figure from a distant state, Dr. Clark must find a clear North Carolina link. He does so with his analysis of Budd, another Republican. Budd, Dr. Clark explains, associated himself explicitly with Trump by getting the former president’s endorsement and actively advertising that fact to North Carolina voters.⁷⁹ It is not unusual for a congressional candidate to covet and then publicize support from a former president of one’s own party, but this is apparently incriminating by Dr. Clark’s logic. As Dr.

⁷⁶ The states in which Trump received a greater share of the vote than North Carolina in 2016 were (in order of the proportion of the Trump vote): West Virginia, Wyoming, Oklahoma, North Dakota, Kentucky, Alabama, South Dakota, Tennessee, Arkansas, Idaho, Nebraska, Louisiana, Mississippi, Indiana, Missouri, Kansas, Montana, South Carolina, Texas, Ohio, Alaska, Iowa, and Georgia. In 2020, Georgia gave less of its support to Trump than did North Carolina, but Florida and Utah gave more.

⁷⁷ A comprehensive and authoritative database of historic presidential election returns can be found at: <https://uselectionatlas.org>.

⁷⁸ Clark report, p. 25. The article is, Lillian Mason, Julie Wronski, and John Kane, “Activating Animus: The Uniquely Social Roots of Trump Support,” *American Political Science Review* 115(2021): 1508-16.

⁷⁹ Clark report, pp. 28-30.

Clark makes clear, “a candidate in North Carolina purposefully aligning with Trump is, by extension, a racial appeal.”⁸⁰

Since Budd has only run statewide once (in 2022) and three times in North Carolina’s Thirteenth Congressional District (2016, 2018, and 2020), the argument must suggest, without saying explicitly, that Budd’s strategy has been widely deployed by Republican candidates throughout North Carolina over the past few decades. Dr. Bagley lists several down-ballot races over roughly the past forty years where he believes he demonstrates this to be the case.⁸¹ To be sure we realize prominent Republicans have been doing this for some time, Dr. Clark quotes Davin Phoenix from his book *The Anger Gap*, who notes “Ronald Reagan and his acolytes” often alluded to “racial stereotypes” with “a nod and a wink.”⁸²

Neither Dr. Bagley nor Dr. Clark use the term “racism” directly, even though several of the academics and journalists do in their work they cite. But Dr. Clark’s use of “racial appeal” can clearly be seen as an example of attitudes, expression, and actions are deemed racist since these appeals constitute a form of “prejudice” or “antagonism” toward people “based upon their membership in a particular racial group.”⁸³ Since the power of his argument depends on a claim racial appeals are common in North Carolina elections these days, it is not unreasonable to conclude his proposition is essentially that the North Carolina Republican Party—its elected officials and candidates, as well as its voters—is motivated by racial bias. They are effectively saying that since racism is pervasive and generally partisan, Republicans are frequently racist.

⁸⁰ Clark report, p. 27.

⁸¹ Bagley report, pp. 37-42.

⁸² Clark report, p. 26. The book is, Davin L. Phoenix, *The Anger Gap: How Race Shapes Emotions in Politics* (New York: Cambridge University Press, 2019).

⁸³ These are central features of the term “racism” according to the Oxford English Dictionaries.

Democrats, today at least, are not.⁸⁴ Given the transparent partisan affiliation, they are indirectly accusing the legislative defendants in this case of the same.

I am hopeful most Americans do not think of their compatriots who voted for Trump as racist. This does not minimize the effect of the implication of the Bagley-Clark argument, however. Some people may be unconcerned with the allegation, but in many walks of life today even a perfunctory and innocent remark labeling someone as racist, regardless of their skin color, might have devastating professional and personal consequences for the accused. The label also appears powerful in an electoral setting.⁸⁵ “Racism” is less a “dog whistle” to Americans with left-of-center politics than it is a siren. Among that large and influential population at the apex of public life, the subject of the slur is morally reprehensible and in any debate—on campus, in the newsroom, in the boardroom, on the campaign trail, in a legislature, in court—should be considered intrinsically disqualified, regardless of actual subject matter and the merits of their argument.

⁸⁴ As Dr. Bagley notes in his discussion of North Carolina’s past, he does not think this was always the case. See Bagley report, pp. 7-14.

⁸⁵ In a recent YouGov poll, 54 percent of Democratic respondents said “racist” was an accurate description of the Republican Party. See: <https://today.yougov.com/politics/articles/49988-how-americans-describe-democratic-republican-parties-poll>. There is a great deal of research to show that “negative partisanship”, that is negative affect and anger directed to the opposition party is a powerful motivator of voting behavior. See, for example, Steven W. Webster, *American Rage: How Anger Shapes Our Politics*, New York: Cambridge University Press, 2020.

Politicians have an incentive to call their opponents “racist.” There are numerous examples of prominent Democrats like President Joe Biden, Vice-President Kamala Harris, and former Speaker Nancy Pelosi calling Trump, congressional Republicans, and Republican voters “racist.” The power of the label is so great prominent Republicans also find it politically useful to call Democrats “racist.” See: <https://www.nbcnews.com/politics/2024-election/vivek-ramaswamy-calls-rep-ayanna-pressley-author-ibram-kendi-part-mode-rcna101873>.

- f. As a proportion of white North Carolinians' uninsured rate, Black North Carolinians' rate is below the national figure, Latinos' above the national figure.
- 4. With regards Factor 7:
 - a. Black North Carolinians are reasonably represented in federal, state, and local elected offices.
- 5. With regards Factor 8:
 - a. North Carolina policymakers are as responsive to state public opinion on economic and cultural issues as the median American state, an important indicator of democratic health;
 - b. North Carolina policymakers include numerous matters that are of presumed interest to Black North Carolinians in the state budget;
 - c. Many issues produced as evidence of North Carolina policymakers' lack of responsiveness to "the particularized needs" of minority North Carolinians are not racial in nature and do not reveal the nature of the "need."
- 6. With regards to Dr. Clark's comparison of Black and Latino voters:
 - a. Assumptions that Black and Latino voters in North Carolina vote the same are flawed.
- 7. With regards Factor 6:
 - a. The use of Trump and, by the extension, the Republican Party in analyses of "racial appeals" does not provide evidence of their disproportionate use in North Carolina elections.

I, Andrew Taylor, Ph.D, acting in accordance with 28 U.S.C. §1746, Federal Rule of Civil Procedure 26(a)(2)(B), and Federal Rules of Evidence 702 and 703, hereby declare that the foregoing is true and correct to the best of my knowledge.

/s/ Andrew Taylor
Andrew Taylor, Ph.D

Date: September 26, 2024